

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NATOMAS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012070797

ORDER DENYING MOTION TO
DISMISS ISSUES

On September 7, 2012, District filed a Motion to Dismiss many of Student's issues on the ground that the Office of Administrative Hearings (OAH) does not have jurisdiction to hear any claims for breach of a settlement agreement between the parties. On September 11, 2012, Student filed an opposition. On September 12, 2012, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Deidre L. Johnson, Office of Administrative Hearings (OAH). Attorney Colleen Snyder appeared on behalf of Student and Parents (Student). Attorney Marcy Gutierrez appeared on behalf of the Natomas Unified School District (District).¹ The ALJ orally issued a tentative ruling denying District's motion and provided the parties an opportunity to orally argue the motion during the PHC.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Improvement Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); Ed. Code, § 56000.) Student has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [*Wyner*].)

This limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Wyner, supra*, at p. 1030.) In

¹ Attorney Colleen Villarreal was present with Ms. Gutierrez.

Wyner, during the course of a due process hearing the parties reached a settlement agreement in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the pupil initiated another due process hearing, and raised issues as to the school district's alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was upheld on appeal. The *Wyner* court held that "the proper avenue to enforce SEHO orders" was the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that "a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing." (*Wyner, supra*, 223 F.3d at p. 1030.)

However, in *Pedraza v. Alameda Unified School District* (N.D. Cal. March 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, *5 [*Pedraza*]) the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education (FAPE) as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement. Settlement agreements are interpreted using the same rules that apply to the interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.)

DISCUSSION

Student and District entered into a settlement agreement on March 13, 2012. Both parties submitted a copy of the written agreement for purposes of this motion. District contends that the following issues in Student's request for a due process hearing (complaint) must be dismissed because Student seeks to enforce them as terms of his settlement agreement: Issues 1(a), 1(b), 1(c), 1(d), 1(e), 2(b), 2(c), 2(d), and 2(h). In addition, District seeks to strike four of Student's proposed resolutions as related to the enforcement of the settlement agreement. Student opposes the motion and argues that the above issues and proposed remedies relate directly to Student's claims that District denied him a FAPE.

All of Student's claims in his complaint are framed as "Denial of FAPE from March 14, 2012 through the Date of Hearing." For example, Issue 1(a) is Student's claim that during this time period, District failed to provide him with "an appropriate positive behavior intervention plan." In Section 2.2 of the settlement agreement, District agreed to conduct a Functional Analysis Assessment (FAA) of Student by a nonpublic agency. In connection with that assessment, the parties agreed in Section 2.3, to convene an individualized education program (IEP) team meeting to review the FAA "on or by April 17, 2012."

Section 2.3 of the agreement further states:

At said IEP meeting, the IEP team shall discuss whether Student requires aide support, behavior supervision, positive behavior interventions, and/or any other supports necessary for Student to receive a FAPE, after full consideration of the FAA, and with appropriate deference given to the assessor's recommendations.

During the PHC, the ALJ asked Student why he thought District was obligated to have a positive behavior intervention plan on and after March 14, 2012. The parties explained that District's IEP for Student in November, 2011, included a behavior intervention plan. While Student's complaint does not claim that the behavior intervention plan was inappropriate when offered in November 2011, he does claim that it was inappropriate by mid-March 2012, and continues to deny him a FAPE.

Contrary to District's argument, Section 2.3 of the settlement agreement does not promise either a positive behavior intervention plan, or the modification of one already in existence. While it might be anticipated that the assessor would recommend modifications to an existing behavior plan, it is clear that Student is not demanding mere implementation of the agreement. Section 2.3 defers such decisions to Student's IEP team, with deference to the FAA and the assessor's recommendations. Student's Issue 1(a) therefore involves a denial of FAPE, and the terms of the settlement agreement appear to be relevant. This issue is thus either independent of the settlement agreement or falls within the *Pedraza* exception to the general rule.

Issue 1(b) is Student's claim that District failed to "provide occupational therapy [OT]." In Section 2.1.2 of the settlement agreement, District agreed to "update the IEP dated February 21, 2012 to clarify that the OT support offered to Student is individual at 30 minutes per week and includes a 60 minute per month consultation with Student's classroom teacher." During the PHC, the parties explained that OT was a new service agreed upon in mediation. Student claims District has failed to provide OT, and thus, appears to be seeking to enforce a term of settlement under *Wyner*. However, Student reiterated that he is claiming District's failure to deliver OT services has denied him a FAPE because he requires OT services related to his disability to obtain educational benefit. Student's complaint clearly claims a denial of FAPE based on his lack of receipt of these services. Accordingly, the *Pedraza* exception applies.

All of Student's remaining issues that are listed in District's motion are analyzed in the same fashion. Accordingly, Issues 1(c), 1(d), 1(e), 2(b), 2(c), 2(d), and 2(h) also fall within the exception to the rule as they involve claimed denials of FAPE, and not mere breach of terms of the settlement agreement. So to, while some of Student's proposed remedies involve enforcing matters addressed in the settlement agreement, Student also requests compensatory education in various areas as well as IEP updates for his present levels of academic and functional performance.

Based on the forgoing, Student's Issues and Proposed Resolutions set forth matters that allege a denial of FAPE under federal and California, require a hearing on the merits, and are not dismissed at this time. District retains all rights to present its defenses to the claims.²

ORDER

District's motion to dismiss specified issues in Student's complaint is denied.

Dated: September 20, 2012

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

² For example, District claims that a condition precedent to implementation of the settlement agreement was Parents' signature on the February 2012 IEP, which never took place. (See Section 2.1 of the settlement agreement). This defense is relevant to evaluate District's legal obligations for provision of services.